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# Salina Creek Irrigation Company v. State of Utah et al : Respondent's Reply Brief on Rehearing

Utah Supreme Court

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**IN THE SUPREME COURT  
of the  
STATE OF UTAH**

**SALINA CREEK IRRIGATION  
COMPANY, a Utah corporation,**

*Plaintiff and Respondent,*

**vs.**

**STATE OF UTAH; WAYNE D.  
CRIDDLE, State Engineer of the  
State of Utah; ABRAHAM IRRIG-  
ATION COMPANY; CENTRAL  
UTAH WATER COMPANY;  
DELTA CANAL COMPANY;  
DESERET IRRIGATION COM-  
PANY; MELVILLE IRRIGA-  
TION COMPANY, and W. C. Cole,  
Sevier River Water Commissioner,**

*Defendants and Appellants.*

**Case No.  
9430**

**RESPONDENT'S REPLY BRIEF ON REHEARING**

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**RESPONDENT'S REPLY BRIEF ON REHEARING**

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The issue before this Court in the original appeal and the real issue of the Petition for Re-hearing made by defendants and appellants, is the interpretation of

the term “minimum rights” as used in the Cox Decree at Page 230.

The rights of numerous water users detailed in the Cox Decree are by specific wording designated as “minimum rights.” The appellants seek to have this Court change the description of “minimum rights” in the Cox Decree by adding the ambiguous phrase “one flow right” as being a minimum right. No right in the Cox Decree is described as “One Flow”. Such a phrase implies there should be “Two Flow” or “Three Flow” rights. That such a confusion has never been permitted by this Court is illustrated by the following principles and facts.

The concurring opinion and the dissenting opinion agree with the majority opinion “that there is no ambiguity in the language of the Cox Decree”. The majority opinion holds, with reference to the question of ambiguity of the language: “Since this is stated in clear and unambiguous language, we have no choice but to follow the mandate of the decree.” The concurring opinion agrees by stating: “Said decree simply and clearly said in 1936 what the main opinion, in its third paragraph, said it said.” The dissenting opinion begins by stating: “We are not persuaded that there is any ambiguity in the Cox Decree in providing that a user has a “maximum and a minimum” right. That phrase should require no further explanation.”

The majority opinion states:

“There is no statement in the (Cox Decree) which supports or justifies the order of the State Engineer that the maximum rights of prior appropriators ‘may not be satisfied until all other direct flow rights, designated either as minimum rights or given only one flow right, and those listed on pages 195 to 197 of said decree’ are fully satisfied.”

Analyzing the exception to “first in time, first in right” at Page 230 of the Cox Decree, the first part of the sentence clarifies that all water-rights are to be measured to the user or owner according to their respective dates of priority, indicating that the water-rights of prior priority date take to the exclusion of the later dated priority rights. Then the language in question is inserted as an exception to this general rule. The exception, however, is specifically limited by the language to those water-rights that were decreed as “maximum and minimum” rights in the Decree. It is only that kind of rights that are included in the exception.

There is no hint in the language that any other type of rights were being affected by the language in question other than in situations “where a maximum and minimum right is herein decreed.” To construe that “one flow rights” are included within the meaning of the language is clearly adding to the language something that is not there and is not a matter of interpreting the language as written. The only purpose of the provision is to provide in those situations where maximum and minimum rights have been decreed that the minimum rights of all subsequent maximum and minimum

appropriators be satisfied before the maximum rights of the prior maximum and minimum appropriators may be filled. There is no reference to "one flow" rights. Nowhere in the Cox Decree can one find a definition for or a concept of "one flow". The attempt of appellants and the State Engineer to include these "one flow" rights in the term "minimum rights", where it happens to serve the purpose of appellants, is clearly contrary to all rules of construction found in the law to date.

"Minimum right" is mentioned three times in the clause in question. It is an impossibility to include "one flow rights" within the meaning of "minimum right" the first two times that term is used. The term is used the third time without making reference to any other rights than those referred to when it was used the first two times. "Minimum rights" as used the third time had reference to the very same rights, i.e. "where a maximum and minimum right is herein decreed."

Even if respondents were to concede for argumentative purposes that the term "minimum right" is used the third time in a general way, so that it possibly could include other rights such as the ambiguously described "one flow" rights, the rules of construction announced by the Utah Supreme Court which preclude the giving of an enlarged meaning to the term "minimum rights".

The Utah Supreme Court in *Donahue v. Warner Bros. Pictures Distributing Corp.*, 272 Pac. (2d) 177, 184 (1954), was called on to interpret the meaning of a phrase. One party contended the phrase had a general

meaning and therefore included the activity in question. Judge Crockett, writing the opinion for the Court, rejected the argument as a matter of construction, stating the rule of construction to be:

“ . . . It is a well recognized rule of statutory construction where general terms are used following specific ones, the general must be understood in the light of and as characterized by the specific, and are limited to things of like kind . . . ”

This rule of construction has been consistently applied by the Utah Supreme Court. For instance, in the case of *Memorial Gardens of the Valley v. Love*, 300 Pac. (2d) 628 (1956), one of the parties argued that a term in a statute was a general term and its meaning should be expanded to include the item in question. Judge Crockett, speaking for the majority of the Court, held that the rules of construction prohibited the giving of expanded meanings to general terms when the general terms are used with reference to specific items. The rule of construction was set forth as follows:

“Such general terms cannot be given a literal meaning independent of the context in which they are used. They must be understood in the light of and as characterized by the purpose of the statute, and viewed in relation to the entire context. When specific terms are followed by general terms, the latter are limited to things of like kind.”

The same rule of construction was again applied by the Utah Supreme Court in the case of *Anderson v. Utah County*, 368 Pac. (2d) 912.



Minimum rights have been specifically defined and designated in the Cox Decree wherever awarded, therefore, according to the above stated rules of construction, the term "minimum right" (as used the third time) which appellants contend includes "one flow" rights could not include rights other than those described, defined and designated as minimum rights in the Cox Decree.

An additional guide to interpreting terms of a statute or decree was announced by the Utah Supreme Court in *Perris v. Perris*, 202 Pac. (2d) 731. One of the parties in that case contended that the term "charges" had a general meaning and included the item in question. The Court rejected the argument, based on the following stated rule of construction:

"Noscitur a sociis, prevails. Hence, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute. . . . It is also a familiar policy in the construction of terms of a statute to take into consideration the meaning naturally attaching to them from the context, and to adopt that sense of the words which best harmonizes with the context. . . ."

The term "minimum right", which appellants contend includes "one flow" rights, refers to and is associated in the sentence with the term "maximum and minimum rights", with the term "minimum right" describing rights awarded in the Cox Decree. Therefore, pursuant to the above stated rule of construction the meaning of "minimum right" as used the third time in

the sentence is limited to minimum rights of that group of appropriators whose water right is designated a "minimum right" by the Cox Decree.

The term "one flow" rights was conjured by the State Engineer apparently to enlarge upon "minimum rights" so designated in the Cox Decree and include something less than all other rights but including certain rights described in the Cox Decree other than those rights in the Decree described as "maximum and minimum". He excludes storage rights and implies something less than all other rights were to be included, but further clouds the issue by including A to F rights. No water user has any way of knowing whether the term "one flow" rights includes all rights other than those described as "maximum" and "storage rights" or whether the designation is the least of all flow rights a user has acquired or possesses; or is the "A" right of the A to F or A to L rights, or any other of the many rights described in the Decree. Is "one flow" limited to rights described as a flow of a certain amount of cubic feet per second as contrasted with those rights described in acre feet and those describe as storage rights? There is no reference in the Cox Decree to any class of rights termed as "one flow" rights. If this term is added to the meaning of minimum right, additional litigation will be necessary to define what is meant by "one flow rights". Therefore, the result of accepting appellants' contention or affirming the State Engineer would be to cause more confusion rather than to settle a matter.

The term "one flow" rights is an anomaly. No matter how it is defined, it brings about incongruous results.

For example, Abraham Irrigation Company, Central Utah Water Company and Deseret Irrigation Company, appellant water users, serve designated irrigated lands. Each is awarded in the Decree numerous rights, all of which come to it after storage of the water in the Sevier Bridge Reservoir. Some of these rights are designated in the Cox Decree at Page 196 as follows:

#### Class "A"

		<i>Priority</i>
Abraham Irrigation Company	59 c.f.s.	1874
Deseret Irrigation Company	74 c.f.s.	1874
Central Utah Water Company	12.4 c.f.s.	none

#### Class "B"

Abraham Irrigation Company	5	1874
Deseret Irrigation Company	10.7 c.f.s.	1874

#### Class "C"

Central Utah Water Company	12.5 c.f.s.	none
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#### Class "D"

Abraham Irrigation Company	4285.6 acre ft.	1890
Deseret Irrigation Company	5714.4 acre ft.	1890

#### Class "E"

Central Utah Water Company	5.8 c.f.s.	none
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This designation of the rights shows, first, that the combination of all of a company's rights are a maximum right; that as to Central Utah Water Company, the Class "E" flow right without priority is its least right; that the 5 c.f.s. of Abraham and 10.7 c.f.s. of Deseret Class "B" are their least rights. But what designation does one give the combined 10,000 acre feet Class "D" right? This is obviously a storage right, but what is there to designate one right a flow right and one a storage right, when all such are received after storage in the Sevier Bridge Reservoir?

Also the question arises as to what computation or regulation could be made of the water in the river as of any given day when a right is expressed in acre feet. Could an acre foot be a flow fight?

The adding of "one flow rights" to the meaning of "minimum rights" forces the Court to add other words by way of defining the term added. The problem becomes so complex when the term "one flow right" is applied to the A to L rights up river, the designated maximum and minimum rights upstream and on the tributary San Pitch River that an insertion of such a new phrase or concept would take years of study to evaluate.

As pointed out in the main Brief, counsel for the State Engineer conceded that such a concept would make nugatory all rights designated as maximum rights. Also as pointed out in our original Brief, counsel for appellants conceded the designation of their rights

as A to F was only another way of expressing maximum and minimum.

The provisions on Page 230 of the Cox Decree should be enforced as it is written. Neither "one flow rights" nor any other rights should be added to the unambiguous language. Appellants' contention should be rejected and the Court should affirm the interpretation given by the majority opinion. Inasmuch as none of the appellants have rights designated as minimum rights, the order and judgment of the District Court is a correct adjudication of the rights of the parties to this action.

Respectfully submitted,

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